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Want to Cut Violence Against Our Communities? Decriminalize Sex Work!

BROWSE BY

By Hayley Gorenberg, Deputy Legal Director
MAY 26, 2016

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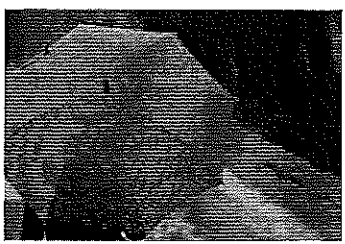
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What's the cost to our communities of outlawing sex work? Amnesty International's new reports lead off with a brutal list of consequences: "Beatings. Rape. Harassment. Forced HIV testing. Exploitation. Extortion. Forced evictions. Exclusion from basic health services. Discrimination."



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And much of it is leveled at LGBT people and people living with or affected by HIV.

Last year, both in solidarity and in recognition of the impact on LGBT people and people affected by HIV, Lambda Legal formalized our position for decriminalizing sex work. Days later, we told the world what's wrong with prosecutions that endanger sex workers' safety.

With Amnesty International's new material, we build an ever more dramatic showing of why we need to stop heaping criminal penalties on people engaged in sex trades.

First and foremost, we know that vectors of discrimination based on sexual orientation, gender identity, race and income often collide, resulting in more people in our communities turning to the sex trades to put food on the table and a roof over their heads.

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Prejudice that results in less access to education cuts choices of one's livelihood, in which case sex work may be the option that rises to the top.

Add criminal laws to the mix, and you deepen the harm: "The stigmatized and criminalized nature of sex work routinely forces sex workers to operate at the margins of society in clandestine and dangerous environments with little recourse to safety or state protection."

Furthermore, "Criminalization of sex work has specifically been shown to directly undermine global HIV prevention efforts. For example, police in many countries frequently confiscate and cite the use of condoms as evidence of sex work offences, creating a disincentive to their use and further jeopardizing the right to the highest attainable standard of health." (These are some key reasons Lambda Legal has for years campaigned against the use of condoms as evidence of crimes designated as "prostitution-related.")

The new Amnesty International reports from spots around the globe (Argentina, Hong Kong, Norway and Papua New Guinea) include damning patterns across diverse countries and cultures showing how criminalizing sex work fuels violence, perpetrated by everyone from clients to law enforcement: "Our research shows that criminalization of sex work gives police impunity to abuse sex workers and acts as a major barrier to police protection for sex workers."

And the new reports show how criminalizing purchasers, sometimes called "the Nordic Solution," doesn't help. This "partial decriminalization" resulted in further stigmatizing workers as well as buyers. And criminalizing only buyers made sex workers less safe: "Many sex workers described buyers' anxiety about police detection, and being asked to visit buyers' homes to protect them from police detection. In the interviews conducted by Amnesty International this was associated with less control for sex workers and a greater risk of violence." Sex workers in Norway had few options for help. One told Amnesty, "If a customer is bad you need to manage it yourself to the end. You only call the police if you think you are going to die. If you call the police you lose everything."

As we work toward decriminalization, we have to make clear that sex work and human trafficking are very different things. We (and Amnesty) remain utterly opposed to forced or coerced labor of any kind. So it's helpful to raise up the difference: "A key component of Amnesty International's definition of sex work is the focus on consent as a factor to distinguish sex work from human trafficking, sexual exploitation, sexual violence and gender-based violence."

Decriminalization can help trafficking victims, as Amnesty's reports show: "When not threatened with criminalization, sex worker organizations have collaborated with police to identify women and children who have been trafficked, and refer them to the necessary services." On the flip side, criminalizing sex work can add barriers to helping trafficked people: "Equally, there is some evidence that traffickers use the existence of criminal law and policy enforcement against sex work to control trafficked persons and discourage them from approaching police for help."

And if we can lift these criminal laws, we can see the promise of better lives, based upon the experience of other countries: "New Zealand decriminalized sex work in 2003 to safeguard sex workers' human rights... [F]ollowing decriminalization, sex workers said they were more able to refuse particular clients and to negotiate safer sex. Government research also confirmed that the relationship between sex workers and police was transformed. In a 2008 study, 70 per cent of sex workers were more likely to report violence and crimes to police, and police were more likely to be seen as protectors rather than enemies or perpetrators."

Grapple with the facts, and the chorus of voices for decriminalizing sex work understandably grows. "Others supporting or calling for decriminalization include the World Health Organization; UNAIDS; Global Commission on HIV and the Law; the UN Special Rapporteur on the Right to Health; Human Rights Watch; The Open Society Foundations; and the Global Alliance Against Traffic in Women."

We are in good company. Less violence. More justice.
Decriminalize sex work.

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Lambda Legal's Commitment to Ensuring Equal Access to Justice on National Public Defense Day

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By Lambda Legal
MARCH 18, 2016

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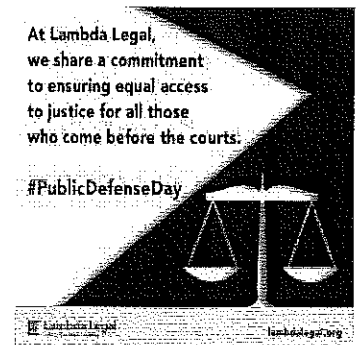
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This blog post was co-authored by **Richard Saenz**, Lambda Legal staff attorney and program strategist on criminal justice and police misconduct issues, and **Eric Lesh** Lambda Legal Fair Courts Project Director.



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This week began with a powerful statement by the federal government, one which Lambda Legal applauds and supports: People should not be forced into a cycle of poverty and criminalization based on the inability to pay criminal and administrative fines.

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This week ends with the anniversary of *Gideon v. Wainwright*, the landmark ruling ensuring legal representation to those charged with serious crimes regardless of their ability to hire a lawyer. Lambda Legal celebrates both of these critical recognitions about our legal system and its obligation to treat people fairly regardless of their incomes.

On March 18, 1963, the U.S. Supreme Court ruled in *Gideon v. Wainwright* that indigent defendants facing felony criminal charges have the right to an attorney. The right to defense counsel is a bedrock principle of our criminal legal system and an essential component of ensuring due process. National Public

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Defense Day now marks the anniversary of this landmark case.

On this 52nd anniversary of Gideon, Lambda Legal recognizes the enormous contributions of public defenders and applauds the U.S. Department of Justice for its letter to state and local courts condemning the illegal enforcement of fines and fees in certain jurisdictions.

The criminalization of poverty disproportionately impacts our community, and in particular, transgender people and LGBT people of color.

According to a 2012 Gallup survey, LGBT people living alone are more likely than non-LGBT people to have incomes near or below the poverty level, and married or partnered LGBT parents raising children were twice as likely to have household incomes near the poverty level compared to married or partnered non-LGBT parents. For years, Lambda Legal has worked to combat discrimination in education and employment, two drivers of poverty in our communities.

The illegal enforcement of fees and fines is just one of the many injustices low-income LGBT people and people living with HIV experience in the courts. In 2012, Lambda Legal conducted a national survey to explore government misconduct by the police, courts, prisons and school security against LGBT people as well as people living with HIV in the United States. Our survey, like others, found that LGBT people and people living with HIV experience significant discrimination at the hands of the very government institutions that are supposed to protect them and ensure their civil rights.

This survey was one of only a few to explore the discrimination LGBT people and people living with HIV experience in the court system. The results show some of the ways the promise of fair and impartial proceedings is tainted by bias related to sexuality, gender and HIV.

- Nineteen percent of respondents reported hearing a judge, attorney or other court employee make negative comments about a person's sexual orientation, gender identity or gender expression.

- Sixteen percent of respondents reported feeling their own sexual orientation or gender identity was raised when it was not relevant.
- Fifteen percent of respondents reported having their HIV status raised when it was not relevant.

As is often the case, respondents with intersecting marginalized identities – such as LGBT people who are low-income, people of color and/or disabled – reported significantly higher instances of discrimination.

Lambda Legal's Fair Courts Project works to advance an independent, diverse and well-respected judiciary that upholds the constitutional and legal rights of LGBT people and those with HIV, while ensuring equal access to justice for everyone. Our "Know Your Rights in Court" resource on is designed to empower court users by providing tools to assist with self-advocacy.

Lambda Legal supports the DOJ's guidance that courts must ensure the defendant's right to counsel in appropriate cases when enforcing fines and fees. Tethering low-income defendants to the criminal legal system due to their inability to pay a debt is a harsh misuse of government power that can worsen mass incarceration.

We will continue to fight to end discrimination and injustice in the criminal legal system, including opposing harmful fines and fees, unfair sentencing and incarceration, and **police misconduct**; supporting decriminalization of sex work; ending the school-to-prison pipeline, and speaking out to abolish the death penalty.

If you have experienced discrimination, contact Lambda Legal's Help Desk.

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Supreme Court Strengthens Constitutional Prohibition Against Racial Discrimination in Jury Selection

BROWSE BY

By **Lambda Legal**
MAY 24, 2016

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This blog post was co-authored by **Eric Lesh**, Lambda Legal Fair Courts Project Director, and **Richard Saenz**, Staff Attorney and Criminal Justice and Police Misconduct Program Strategist.

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The American jury system is a symbol of our democracy. The right to jury trial is guaranteed by our Bill of Rights and embedded in every one of our state constitutions. In criminal cases, the Sixth Amendment guarantees the right to an impartial jury. Yet our jury system is plagued by a history of exclusion and discrimination.

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At a time of important civil rights advancements, in many parts of the country, the purposeful exclusion of black people from juries persisted through the 1960s and beyond. It wasn't until the 1986 case of *Batson v. Kentucky* that the Supreme Court finally found as unconstitutional the discriminatory elimination of otherwise qualified jurors simply on the basis of race

Despite the Supreme Court ruling in *Batson*, racial discrimination in jury selection is still widespread. The Equal Justice Initiative has documented that prosecutors continue to use peremptory

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challenges (a means of allowing jurors to be removed for no reason at all) in order to create racially unrepresentative jury panels.

Yesterday, the U.S. Supreme Court decided an important case that could have a significant impact on efforts to prevent or stop racial discrimination in jury selection.

In 1987, Timothy Foster, a black defendant, was charged with killing Queen Madge White, a 79-year-old white woman in Rome, Georgia. During Foster's trial, the state prosecution eliminated all four black prospective jurors and argued for a death sentence to "deter other people out there in the projects." When challenged by the defense, the Georgia trial court accepted the prosecution's "race-neutral" reasons for each strike, and an all-white jury sentenced Foster to death.

More than two decades later, through the Georgia Open Records Act, Foster obtained from the State copies of the file used by the prosecution during the trial. The prosecution's notes revealed that they labeled each black juror with a "B" and ranked each juror in order of preference if "it comes down to having to pick one of the black jurors."

In *Foster v Chatman*, the justices ruled 7-1 that, with respect to two of the challenges, Georgia prosecutors purposely targeted black jurors to keep them off the trial — and that such a move was unconstitutional.

"The focus on race in the prosecution's file plainly demonstrates a concerted effort to keep black prospective jurors off the jury," Chief Justice John Roberts wrote in the opinion for the Court. "Two peremptory strikes on the basis of race are two more than the Constitution allows." Foster's case now goes back to back to the Georgia courts for further review.

Discrimination in the jury selection process reinforces historical bias and prejudice in the judicial system, interferes with the litigants' right to a fair trial, and undermines public confidence in the courts.

Concern that bias, prejudice, and politics will interfere with the

fair administration of justice is particularly consequential when an individual's very life is at stake. Since 1977, the overwhelming majority of death row defendants (77%) have been executed for killing white victims, although black people make up about half of all homicide victims. Bias in the courts — including racism, gender bias and homophobia — affects who is sentenced to death and is one of the reasons that Lambda Legal opposes the death penalty as a harsh and irreversible misuse of government power.

Though discriminatory peremptory challenges persist, a finding by a judge that a strike was racially motivated is extremely rare. Stephen Bright, who argued on Foster's behalf, said in an interview that elected state judges — often former prosecutors themselves — find it politically and psychologically difficult to rule that a prosecutor standing before them intentionally discriminated against a juror and then lied about it when giving “race-neutral” reasons. This is yet another troubling consequence of judicial elections and the public pressure placed on judges to appear “tough on crime” if they hope to keep their jobs.

Bias and discrimination in jury selection are serious problems on many fronts throughout the trial system. For example, lawyers continue to disqualify potential jurors on the basis of their sexual orientation or gender identity, and there is no federal law expressly prohibiting such discrimination. Lambda Legal supports the Jury ACCESS Act, which would ban discrimination on the basis of sexual orientation and gender identity in federal jury selection.

In 2000, a California state court in the case of *People v Garcia*, became the first in the country to rule that state law prohibited removing jurors on the basis of their sexual orientation, and in 2014 the Ninth Circuit Court of Appeals became the first federal court to rule in *SmithKline Beecham Corp. v. Abbott Labs*, that disqualifying jurors based on their sexual orientation directly contravenes the Equal Protection Clause of the U.S. Constitution.

To help legal practitioners confront anti-LGBT bias and discrimination in jury selection, Lambda Legal's Fair Courts Project just launched a new resource: *Jury Selection and Anti-LGBT Bias: Best Practices in LGBT-Related Voir Dire and Jury*

Matters. This resource is for use by both prosecutors and defense attorneys, and in civil cases.

As with other groups targeted with invidious discrimination, far too often discrimination against LGBT people has found its way into the courtroom, denying them equal access to justice and an equal opportunity to participate in civic life.

We must end discrimination and prejudice in all aspects of our criminal legal system — including state courts. Learn more about how each of us can take action to protect fair courts.

SEE ALSO: CRIMINAL JUSTICE, FAIR COURTS PROJECT

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

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